

MSG

CIVIL COVER SHEET

15-a-5951

The JS-41 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Naked Wines LLC

DEFENDANTS

Brew4You Inc. d/b/a Prism Brewing Company

(b) County of Residence of First Listed Plaintiff

(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant Dauphin County

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Diane Siegel Danoff DECHERT LLP
2929 Arch St.
Philadelphia PA 19104-2857 Tel: +1 215.994.2179

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 2 Federal Question (U.S. Government Not a Party)
- ☐ 3 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input checked="" type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395H) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

Lanham Act, 15 U.S.C. § 1051 et seq.

Brief description of cause:

Action for trademark infringement, false designation of origin, and unfair competition under the Lanham Act

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

NOV - 2 2015

DATE 11/2/15 SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

MSG

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA — DESIGNATION FORM to be used by counsel to indicate the category of the case for the purpose of assignment to appropriate calendar.

Address of Plaintiff: Naked Wines LLC, 102 2nd Street, Hood River, OR 97031Address of Defendant: Brew4You Inc. d/b/a Prism Brewing Company, 100 Pine Street, Ste. 325, Harrisburg, PA 17101Place of Accident, Incident or Transaction: Nationwide, including but not limited to Pennsylvania and New Jersey
(Use Reverse Side For Additional Space)Does this civil action involve a nongovernmental corporate party with any parent corporation and any publicly held corporation owning 10% or more of its stock?
(Attach two copies of the Disclosure Statement Form in accordance with Fed.R.Civ.P. 7.1(a)) Yes ☐ No ☒Does this case involve multidistrict litigation possibilities? Yes ☐ No ☒

RELATED CASE, IF ANY:

Case Number: _____ Judge _____ Date Terminated: _____

Civil cases are deemed related when yes is answered to any of the following questions:

1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court?
Yes ☐ No ☒
2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court?
Yes ☐ No ☒
3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action in this court?
Yes ☐ No ☒
4. Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights case filed by the same individual?
Yes ☐ No ☒

CIVIL: (Place ☒ in ONE CATEGORY ONLY)

A. Federal Question Cases:

1. ☐ Indemnity Contract, Marine Contract, and All Other Contracts
2. ☐ FELA
3. ☐ Jones Act-Personal Injury
4. ☐ Antitrust
5. ☐ Patent
6. ☐ Labor-Management Relations
7. ☐ Civil Rights
8. ☐ Habeas Corpus
9. ☐ Securities Act(s) Cases
10. ☐ Social Security Review Cases
11. ☒ All other Federal Question Cases
(Please specify) Trademark

B. Diversity Jurisdiction Cases:

1. ☐ Insurance Contract and Other Contracts
2. ☐ Airplane Personal Injury
3. ☐ Assault, Defamation
4. ☐ Marine Personal Injury
5. ☐ Motor Vehicle Personal Injury
6. ☐ Other Personal Injury (Please specify)
7. ☐ Products Liability
8. ☐ Products Liability — Asbestos
9. ☐ All other Diversity Cases

(Please specify) _____

ARBITRATION CERTIFICATION

(Check Appropriate Category)

I, Diane Siegel Danoff,

counsel of record do hereby certify:

- ☐ Pursuant to Local Civil Rule 53.2, Section 3(e)(2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs;
- ☒ Relief other than monetary damages is sought.

DATE: 11/2/15Diane Siegel Danoff
Attorney-at-Law50644

Attorney I.D.#

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.

I certify that, to my knowledge, the within case is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE: 11/2/15Diane Siegel Danoff
Attorney-at-Law50644

Attorney I.D.#

NOV - 2 2015

MSG

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

CASE MANAGEMENT TRACK DESIGNATION FORM

NAKED WINES LLC, an Oregon domestic
limited liability company,
Plaintiff, v.
BREW4YOU INC. d/b/a PRISM BREWING
COMPANY, a Pennsylvania corporation,

CIVIL ACTION

NO.

15 5951

Defendant.

In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a Case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a Case Management Track Designation Form specifying the track to which that defendant believes the case should be assigned.

SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:

- (a) Habeas Corpus – Cases brought under 28 U.S.C. § 2241 through § 2255. ☐
- (b) Social Security – Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits. ☐
- (c) Arbitration – Cases required to be designated for arbitration under Local Civil Rule 53.2. ☐
- (d) Asbestos – Cases involving claims for personal injury or property damage from exposure to asbestos. ☐
- (e) Special Management – Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases.) ☐
- (f) Standard Management – Cases that do not fall into any one of the other tracks. ☒

11/2/15
Date

Diane Segel Danoff Naked Wines LLC
Attorney-at-law Attorney for

+1 215.994.2179 Direct

+1 : 215.655.2179 Fax

diane.danoff@dechert.com

Telephone

FAX Number

E-Mail Address

(Civ. 660) 10/02

NOV -2 2015

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA**

**NAKED WINES LLC,
Plaintiff,**

Case No.:

v.

JURY DEMAND

**BREW4YOU INC. d/b/a PRISM BREWING
COMPANY,
Defendant.**

COMPLAINT

Plaintiff NAKED WINES LLC d/b/a Naked Winery ("Naked Winery" and "Plaintiff"), alleges as follows against Defendant BREW4YOU INC. d/b/a PRISM BREWING COMPANY ("Brew4You" and "Defendant"), on personal knowledge as to Plaintiff's own activities and on information and belief as to the activities of others, as follows:

NATURE OF THE CASE

1. This is an action for trademark infringement, false designation of origin, and unfair competition under the Lanham Act (codified at 15 U.S.C. § 1051, *et seq.*); and common law trademark infringement and unfair competition.

JURISDICTION AND VENUE

2. This Court has subject matter jurisdiction pursuant to 15 U.S.C. § 1121 and 28 U.S.C. §§ 1331 and 1338(a) in that the case involves a federal question arising under the trademark laws of the United States.

3. This Court has supplemental jurisdiction over Plaintiff's state law claims pursuant to the provisions of 28 U.S.C. § 1338(b) insofar as the claims are joined with a substantial and related federal claim arising under the trademark laws of the United States. *See* 15 U.S.C. § 1051 *et seq.*

4. This Court has personal jurisdiction over Defendant at least because Defendant is incorporated in the State of Pennsylvania, has substantial contacts in the State of Pennsylvania related to the claims in this action, and/or is engaged in the wrongful acts alleged herein in the State of Pennsylvania.

5. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b)(2).

PARTIES

6. Plaintiff Naked Wines LLC is an Oregon limited liability company with its principal business address at 102 2nd Street, Hood River, Oregon 97031.

7. Defendant Brew4You Inc. is a Pennsylvania corporation with its principal business address at 810 Dickerson Road, North Wales, Pennsylvania 19454, and a registered office address at 100 Pine Street, Ste. 325, Harrisburg, Pennsylvania 17101.

STATEMENT OF FACTS COMMON TO ALL COUNTS

Naked Winery's Family of Marks

8. Naked Winery is a winery that produces wine made from Oregon-, Washington-, and California-grown grapes. Naked Winery's hometown and company headquarters is located in the heart of downtown Hood River, a small town located about 60 miles east of Portland, Oregon. Additionally, Naked Winery has facilities in Wishram, Washington.

9. Naked Winery sells a wide variety of wines, including various white wines, red wines, blush wines, and dessert wines, both through traditional brick-and-mortar establishments, and online, including through its website, www.nakedwinery.com.

10. Naked Winery presently ships to and distributes its wines to 38 states, including New Jersey and several other eastern states, as well as the District of Columbia.

11. Naked Winery is the owner of a family of erotically-themed “NAKED” marks for its wines and related services (collectively, “the NAKED Marks”):

Mark	U.S. TM Reg. No.	Date of Issuance	Goods	First Use in Commerce
NAKED WINERY	3,597,649	03/31/2009	wine; natural wines; table wines; white wines; and red wine	11/30/2005
NAKED WINERY + design	3,502,269	09/16/2008	wine; natural wines; table wines; white wine; and red wine	07/05/2007
SIP INTO SOMETHING A LITTLE MORE NAKED	3,558,709	01/06/2009	wine; natural wines; table wines; white wine; and red wine	07/05/2007
NAKED WINERY VIXEN	3,693,297	10/6/2009	wine; natural wines; table wines; white wines; and red wine	06/26/2009
NAKED WINERY NAUGHTY	3,677,064	09/01/2009	Wine; natural wines; tables wines; white wine	06/29/2009
THE NAKED TRUTH	4,414,935	10/08/2013	providing online newsletters in the field of wine; on-line journals, namely, blogs featuring discussions of wine, enology, bottling, storage and enjoyment of wine	02/25/2010
NAKED WINERY DIVA	3,828,747	8/3/2010	wine; natural wines; table wines; white wines; and red wine	04/16/2010

12. In addition to the NAKED Marks, Naked Winery is also the owner of other erotically-themed marks for its wines, including:

Mark	U.S. TM Reg. No.	Date of Issuance	Goods	First Use in Commerce
MISSIONARY	3,574,754	02/17/2009	wine; natural wines; table wines; and red wine	02/10/2006
PENETRATION	3,574,753	02/17/2009	wine; natural wines; table wines; and red wine	02/10/2006
TEASE	3,671,499	08/25/2009	wine; natural wines; table wine; and white wine	02/28/2006
ESCORT	3,574,752	02/17/2009	wine; natural wines; tables wines; and white wine	01/15/2007

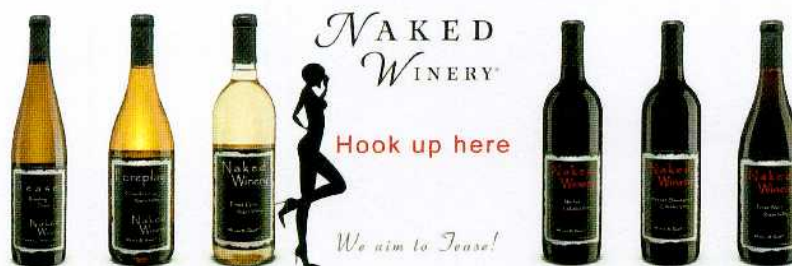
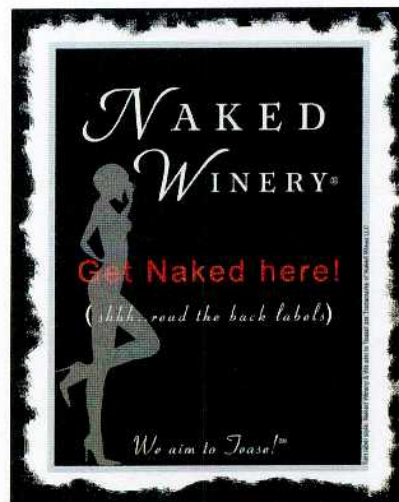
WE AIM TO TEASE	3,547,964	12/16/2008	wine; natural wines; table wines; white wine; and red wine	07/05/2007
DOMINATRIX	3,558,707	01/06/2009	wine; natural wines; table wines; and red wine; white wine	11/13/2007
SEDUCTIVE	4,080,345	01/03/2012	wine; natural wines; table wines; white wine	02/04/2008
POUR'N	3,709,680	11/10/2009	wine; natural wines; table wines; white wine	02/04/2008
EROTIC	3,883,263	11/30/2010	wine; natural wines; table wines; white wine	02/04/2008
SHAG	3,731,976	12/29/2009	wine; natural wines; table wines; and white wine	02/05/2008
CLIMAX	3,873,772	11/09/2010	wine; natural wines; table wines; white wine	05/24/2008
ORGASMIC WINE COMPANY	3,513,479	10/07/2008	wine; natural wines; table wine; and white wine	08/03/2008
SURE THING	4,335,005	05/14/2013	Wine	02/02/2010
BLAZING STRADDLE	4,335,006	05/14/2013	Wine	02/18/2010
GAY	4,487,150	02/25/2014	Wine	07/08/2010
SCORE	4,359,324	06/25/2013	Wine	10/20/2012
CIRQUE DU RISQUE	4,428,890	11/05/2013	Wine	02/25/2013
HOOK UP	4,433,689	11/12/2013	Wine	08/13/2013
ROOM SERVICE	4,514,552	04/15/2014	Wine	08/30/2013
SWEET LOVE	4,489,228	02/25/2014	Wine	09/28/2013
ENORMOUS	4,581,164	08/05/2014	Wine	04/28/2014

13. Naked Winery is also the owner of the mark NKD for “wine,” U.S. Trademark Application Ser. No. 86/332,434, filed July 9, 2014.

14. As demonstrated by the above-listed marks, Naked Winery has taken an erotic, romantic, and sexually suggestive approach to the branding and marketing of its wines. Indeed, Naked Winery uses such advertising slogans as “I Get Naked Regularly,” “We Get Naked Daily,” and “We Just Got Naked.”

15. Naked Winery’s erotic, romantic, and sexually suggestive approach to the marketing and promotion of its wines can also be seen in its logos and signage, examples of

which are set forth below:



16. Naked Winery's erotic, romantic, and sexually suggestive marketing of its wines extends to the back labels of its wines, which are reproduced on Naked Winery's website, such as the following examples:

Naked is our bare-all wine. Stripped of traditional attitudes, only the free-spirited grapes go into this voluptuous wine. Lusty with a smooth complexion and long legs. This wine gives a full-frontal of ripe cherries with a firm well-rounded end. Who doesn't love to get Naked?

Vixen, our foxy wine, is coy at first then comes on strong with elements of blackberry

and some cherry. This is a wine with attitude and aromas that ignite the senses with silky tannins that bite and hold on. Don't forget your whip on the hunt, as this Vixen has her own set of rules!

Tantalizing to the eye and playfully seductive, this Tease promises to be a sure thing. Sweet perfumes of candied melons and Brazilian spices will moisten your palate, not to mention your khakis. An innocent sip of the glass, with a skilled tongue, sparks a burning desire for the long sweet finish. We aim to Tease!

17. In addition to marketing its wines through traditional methods, Naked Winery heavily markets its wines through social media, such as Facebook®, Instagram®, and Twitter®. Naked Winery's erotic, romantic, and sexually suggestive marketing extends into these forums as well; for example, customers often pose for pictures with various tongue-in-cheek NAKED signs that are then reposted to Naked Winery's social media accounts.

18. Naked Winery has used its trademarks, including the NAKED Marks, continuously in connection with the advertising, promotion, and sale of its products since at least each mark's "Date of First Use in Commerce" set forth in the charts above.

19. On account of its long and continuous use of its marks and sale of its products under its marks, Naked Winery has established trademark rights in its marks.

20. Through its promotional efforts, business conduct, and continuous use of its marks, Naked Winery has developed and maintains customers throughout the United States. Naked Winery's marks have become an asset of substantial value as a symbol of Naked Winery and its products.

Brew4You and Its Erotically-Themed Marks & Logos

21. Brew4You produces malt beverages which it bottles and kegs, sells, and distributes, both at its Prism Brewing Company taproom in North Wales, Pennsylvania, and at numerous other locations throughout Pennsylvania and New Jersey.

22. Brew4You promotes and advertises its malt beverages through its website, www.prismbeer.com, as well as through its social media accounts on Facebook®, Twitter®, and Instagram®.

23. In 2013, Brew4You began marketing, selling, and distributing malt beverages under the erotically-themed marks NAKED RED, NAKED BLONDE, NAKED BRUNETTE, and NAKED PALE, used with erotic, romantic, and sexually suggestive themes and imagery.

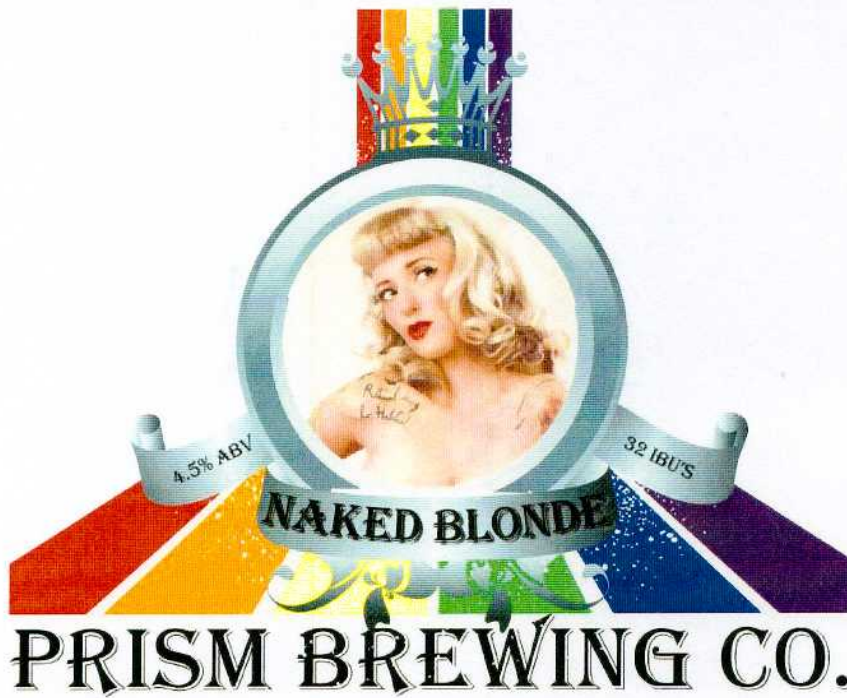
24. For instance, on February 5, 2013, Brew4You filed an application for a Certificate of Label Approval (COLA) with the Alcohol and Tobacco Tax and Trade Bureau for the following label, for malt beverages, bearing the erotically-themed mark NAKED RED and erotic, sexually suggestive themes and imagery:



25. Brew4You has also filed several other applications for COLAs for the erotically-themed marks NAKED RED, NAKED BLONDE, NAKED BRUNETTE, and NAKED PALE.

26. At approximately the same time it first applied for labels bearing erotically-themed NAKED marks, Brew4You began promoting and advertising malt beverages bearing NAKED marks and erotic, sexually suggestive themes and imagery on its social media accounts,

such as the following Facebook® posts for NAKED RED malt beverages, dated February 1, 2013, and NAKED BLONDE malt beverages, dated May 21, 2013:



27. On or about March 14, 2013, Brew4You filed Trademark Application Ser. No. 85/875,790 (“the ‘790 application”) with the United States Patent and Trademark Office (USPTO), seeking to register the mark NAKED for “Ale; Ale and porter; Ales; Beer; Beer, ale and lager; Beer, ale and porter; Beer, ale, lager, stout and porter; Beer, ale, lager, stout, porter, shandy; Beers; Black beer; Brewed malt-based alcoholic beverage in the nature of a beer; Malt beer; Malt liquor; Pale beer; Porter,” claiming first use in commerce of the mark “[a]t least as early as 02/11/2013.”

28. In support of the ‘790 application, Brew4You filed the following specimen of use, which Brew4You described as “[d]igitally photographed product with label,” bearing the NAKED RED mark with erotic, sexually suggestive themes and imagery:



29. In further support of the '790 application, Brew4You filed what it described as a "marketing sales sheet showing use of the mark," which included the following erotic, romantic, and/or sexually suggestive descriptions of Brew4You's "NAKED SERIES" of beers:

NAKED RED

Red Heads are full of fire and hard to handle. Our Red is complex but down to earth, thanks to it's English hops and balanced malt/hop profile. We agree with Lucille Ball who said "Once in his life, every man is entitled to fall madly in love with a gorgeous redhead."

NAKED BLONDE

They say Blondes have more fun. We're sure that with our Blonde you'll agree. This Blonde isn't shady, but she isn't sweet either. She goes down smooth and will leave you wanting more.

NAKED BRUNETTE

Rumor has It that brunettes are innocent, intelligent, rich, & capable. Our brunette proves this to be true and this one is naked; without the strawberries and Jalapenos that gives her the attitude that makes Love is evol. Naked AND without an attitude...sounds good doesn't it?

30. On March 28, 2013, Naked Winery sent a letter to Brew4You concerning the '790 application, in which Naked Winery identified its family of erotically-themed NAKED Marks and its prior rights in NAKED. In the letter, Naked Winery asked Brew4You to identify its intended channels of trade for goods to be offered under the mark, as well as to provide specimens showing the manner in which the mark would be used. Naked Winery stated that it was "particularly interested in any meanings that are intended to be applied to the NAKED portion of the mark, and whether the mark will be advertised in an erotic or provocative manner."

31. Brew4You responded on April 14, 2013, claiming its use of NAKED was intended to "say that the beers were brewed without additional elements," but attaching the following example of intended use of the mark:



32. In the ensuing months, Naked Winery attempted to reach a resolution with Brew4You concerning Brew4You's confusing use of NAKED, but Brew4You did not substantively respond to Naked Winery's efforts.

33. On October 8, 2013, Naked Winery filed an opposition against Brew4You's '790 application with the Trademark Trial and Appeal Board (TTAB). Brew4You never filed an answer to the opposition and, as a result, on January 29, 2014, the TTAB entered judgment by default against Brew4You, sustained the opposition, and refused registration to Brew4You.

34. On or about the same time the TTAB entered default judgment, Brew4You contacted Naked Winery and asked to "revisit this issue." Naked Winery indicated its willingness to discuss the matter, and asked Brew4You to call, but Brew4You did not respond.

35. On or about October 29, 2014, nine months after default judgment was entered against it, Brew4You sent an email to Naked Winery, once more asking to "revisit" the matter and attaching the following examples of its intended use of NAKED:



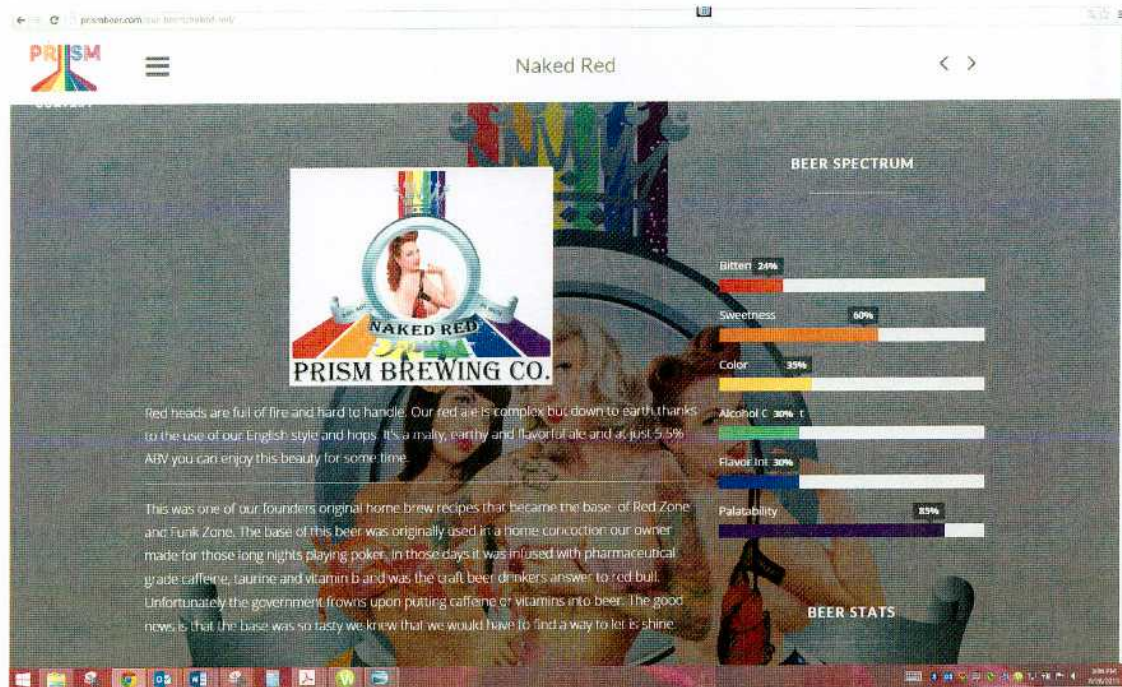


36. On November 26, 2014, Naked Winery responded, indicating it would not permit such usage of the marks, that the use was likely to cause confusion, and asking Brew4You to “immediately cease use of these labels, and any other uses of NAKED.” Brew4You did not respond.

37. On February 3, 2015, Naked Winery sent a formal cease and desist letter concerning Brew4You’s use of NAKED RED, NAKED BLONDE, NAKED BRUNETTE, and NAKED PALE.

38. On March 4, 2015, the parties discussed a transition away from the problematic uses, with Brew4You indicating it would provide Naked Winery with new labels in the near future. Despite several follow-ups by Naked Winery over the ensuing months, the promised new labels never materialized, and Brew4You stopped communicating with Naked Winery.

39. As of the filing of this suit, Brew4You continues to use at least the NAKED RED mark, along with erotic, sexually suggestive themes and imagery, as shown in the following capture from Brew4You's www.prismbeer.com website:



Brew4You's Infringement of the NAKED Marks

40. Naked Winery and Brew4You are direct competitors, selling similar goods to identical customers through similar marketing channels.

41. Brew4You's NAKED RED, NAKED BLONDE, NAKED BRUNETTE, and NAKED PALE marks are substantially similar to Naked Winery's NAKED Marks.

42. Naked Winery and Brew4You both use erotically-themed marks and erotic, romantic, and/or sexually suggestive themes and imagery in the branding and marketing of their goods.

43. Confusion is likely, including initial interest confusion, and may already be occurring due to the substantially similar nature of the parties' marks.

44. Confusion is also likely, including initial interest confusion, given the use of

erotically-themed marks and erotic, romantic, and/or sexually suggestive themes and imagery in the branding and marketing of both parties' goods.

45. Because of the damage to Naked Winery's goodwill that has already been caused by and continues to be caused by Brew4You's use of the NAKED RED, NAKED BLONDE, NAKED BRUNETTE, and NAKED PALE marks, this Complaint follows.

COUNT 1
Federal Trademark Infringement, 15 U.S.C. § 1114

46. Naked Winery repeats and realleges each of the allegations contained in paragraphs 1 through 45 of this Complaint as if fully set forth herein.

47. Brew4You's unauthorized use in interstate commerce of the NAKED RED, NAKED BRUNETTE, NAKED PALE, and NAKED BLONDE marks in connection with Brew4You's goods constitutes infringement of Naked Winery's trademark rights in the NAKED Marks, misappropriates the valuable goodwill developed by Naked Winery in the NAKED Marks and is likely to cause confusion, mistake, or deception, as well as initial interest confusion.

48. The acts of Brew4You described above constitute an infringement of Naked Winery's rights in and to the use of its federally registered NAKED Marks, with consequent damages to Naked Winery and to the business and goodwill associated with and symbolized by Naked Winery's NAKED Marks and, specifically, give rise to this action under 15 U.S.C. §§ 1114 *et seq.*

49. Brew4You's acts of trademark infringement have caused and are causing great and irreparable harm to Naked Winery, Naked Winery's goodwill, and Naked Winery's rights to exclusive use of the NAKED Marks, all in an amount which cannot adequately be determined at this time and, unless Brew4You is preliminarily and permanently restrained, Brew4You's acts

will cause further injury and damage, leaving Naked Winery with no adequate remedy at law.

50. Brew4You's acts of infringement have been and are being committed after actual notice and/or notices effectuated by law, and are willful and in gross disregard of Naked Winery's rights.

51. By reason of the foregoing, Naked Winery is entitled to preliminary and permanent injunctive relief against Brew4You, and anyone associated therewith, to restrain further acts of infringement and, after trial or summary judgment, to recover any damages proven to have been caused by reason of Brew4You's aforesaid acts of infringement, and to recover enhanced damages and attorneys' fees based upon the willful, intentional, and/or grossly negligent activities of Brew4You.

COUNT 2

False Designation of Origin and Unfair Competition, 15 U.S.C. § 1125

52. Naked Winery repeats and realleges each of the allegations contained in paragraphs 1 through 51 of this Complaint as if fully set forth herein.

53. Brew4You, by its knowing and intentional unauthorized imitation, adoption, and use of Naked Winery's NAKED Marks in association with Brew4You's goods, has and continues to falsely designate its goods as being derived or affiliated with those of Naked Winery.

54. Brew4You's use of Naked Winery's NAKED Marks, as aforesaid, is likely to cause relevant consumers to mistakenly believe that Brew4You has an affiliation with Naked Winery, that Brew4You's business is sponsored or approved by Naked Winery, or that Brew4You is otherwise associated with or has obtained permission from Naked Winery to use Naked Winery's NAKED Marks in connection with the sale of goods by Brew4You.

55. By engaging in the unauthorized activities described above, Brew4You has made,

and continues to make, false, deceptive, and misleading statements constituting false representations made in connection with the sale of goods or services distributed in interstate commerce in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a). Furthermore, in view of Brew4You's knowledge of Naked Winery's NAKED Marks, such activities were, and remain, willful and intentional.

56. Brew4You's acts of unfair competition and false designation of origin have been and are being committed after actual notice and/or notices effectuated by law, and are willful and in gross disregard of Naked Winery's rights.

57. Brew4You's willful and intentional acts of unfair competition and false designation of origin have caused and are causing great and irreparable injury and damage to Naked Winery's business and its goodwill and reputation in an amount that cannot be ascertained at this time and, unless preliminarily and permanently restrained, will cause further irreparable injury and damage, leaving Naked Winery with no adequate remedy at law.

58. By reason of the foregoing, Naked Winery is entitled to preliminary and permanent injunctive relief against Brew4You, and anyone acting in concert with Brew4You, to restrain further acts of unfair competition, false advertising, and false designation of origin and, after trial, to recover any damages proven to have been caused by reason of Brew4You's aforesaid acts, and to recover enhanced damages based on Brew4You's willful, intentional, and/or grossly negligent acts.

COUNT 3
Common Law Trademark Infringement

59. Naked Winery repeats and realleges each of the allegations contained in paragraphs 1 through 58 of this Complaint as if fully set forth herein.

60. Naked Winery was the first to adopt or use the NAKED Marks either within or

without the State of Oregon as well as other states and has continuously used the NAKED Marks in commerce in connection with Naked Winery's goods and services since at least as early as November 30, 2005, and, accordingly, has established common law trademark rights in the NAKED Marks.

61. Brew4You's unauthorized use in commerce of the NAKED RED, NAKED BLONDE, NAKED BRUNETTE, and NAKED PALE marks in connection with malt beverages constitutes ongoing infringement of Naked Winery's common law trademark rights, misappropriates the valuable goodwill developed by Naked Winery in the NAKED Marks, and is likely to cause or has caused confusion among the relevant consuming public with the NAKED Marks.

62. Brew4You was, or should have been, aware of Naked Winery's use of and corresponding rights in the NAKED Marks. Brew4You's acts aforesaid, including using names, terms, and/or marks that are confusingly similar to the NAKED Marks for identical or substantially similar goods and services, constitute willful infringement of Naked Winery's rights in the NAKED Marks.

63. Brew4You's acts of willful infringement of Naked Winery's rights in the NAKED Marks have caused and, unless restrained, will continue to cause great and irreparable injury to Naked Winery, Naked Winery's business, and to the goodwill and reputation of Naked Winery in an amount that cannot be ascertained at this time, leaving Naked Winery no adequate remedy at law.

64. Brew4You's acts are the proximate cause of such injury and damage.

65. By reason of the foregoing, Naked Winery is entitled to declaratory and injunctive relief, both preliminary and permanent, against Brew4You, and anyone acting in concert with

Brew4You, to restrain further acts of infringement of Naked Winery's rights and, after trial, to recover any damages proven to have been caused by reason of Brew4You's aforesaid acts of infringement and any enhanced damages justified by the willful and intentional nature of such acts.

COUNT 4
Common Law Unfair Competition

66. Naked Winery repeats and realleges each of the allegations contained in paragraphs 1 through 65 of this Complaint as if fully set forth herein.

67. By advertising and marketing its goods and services under the NAKED RED, NAKED BLONDE, NAKED BRUNETTE, and NAKED PALE marks, including using the marks in an erotic, romantic, and sexually suggestive manner, Brew4You exploits Naked Winery's reputation in the market by selling confusingly similar goods and services under confusingly similar marks in a way that suggests that Brew4You's goods and services are associated with Naked Winery, in ongoing violation of the common law.

68. Brew4You was, or should have been, aware of Naked Winery's use of and corresponding rights in the NAKED Marks. Brew4You's acts aforesaid constitute willful violation and intentional acts of common law unfair competition.

69. Brew4You's willful and intentional acts of common law unfair competition have caused and are causing great and irreparable injury and damage to Naked Winery's business and its goodwill and reputation in an amount that cannot be ascertained at this time and, unless preliminarily and permanently restrained, will cause further irreparable injury and damage, leaving Naked Winery with no adequate remedy at law.

70. Brew4You's acts are the proximate cause of such injury and damage.

71. By reason of the foregoing, Naked Winery is entitled to declaratory and injunctive

relief, both preliminary and permanent, against Brew4You, and anyone acting in concert with Brew4You, to restrain further acts of unfair competition and, after trial, to recover any damages proven to have been caused by reason of Brew4You's aforesaid acts, and to recover enhanced damages based on Brew4You's willful, intentional, and/or grossly negligent acts.

PRAYER FOR RELIEF

WHEREFORE, Naked Winery asks this Court to enter judgment against Brew4You and against Brew4You's parents, subsidiaries, affiliates, agents, servants, employees, and all persons in active concert or participation with them, granting the following relief:

- A. A judgment or order declaring that Brew4You has infringed the NAKED Marks;
- B. A judgment or order declaring that Brew4You has engaged in unfair competition and falsely designated the origin of its goods;
- C. A determination that Brew4You's infringement of the NAKED Marks has been and is willful;
- D. Issuance of a preliminary and a permanent injunction enjoining Brew4You, its agents, officers, assigns, and all others acting in concert with them from:

(1) imitating, copying, using, reproducing, registering, attempting to register and/or displaying the NAKED RED, NAKED BLONDE, NAKED BRUNETTE, and NAKED PALE marks, or any mark or designation which colorably imitates or is confusingly similar to the NAKED Marks, alone or in combination with any other term(s), word(s), name(s), symbol(s), device(s), designation(s) and/or design(s) in any manner whatsoever;

(3) using any other false description or representation or any other thing calculated or likely to cause confusion, deception or mistake in the marketplace with

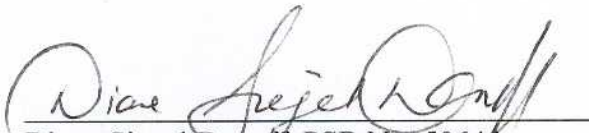
regard to Naked Winery's NAKED Marks;

- E. An order directing that Brew4You deliver up for destruction all materials and matter in its possession or custody or under its control that infringe or unfairly compete with Naked Winery's NAKED Marks;
- F. An order directing that Brew4You remove all instances of NAKED marks from its website, promotional materials, social media accounts, and all other materials, tangible or intangible;
- G. An order directing that Brew4You file with the Court and serve upon counsel for Naked Winery within thirty (30) days after the entry of such order or judgment, a report in writing and under oath setting forth in detail the manner and form in which Brew4You has complied with the injunction;
- H. An order awarding to Naked Winery treble actual damages and treble damages based upon an accounting of Brew4You's profits, including all statutory enhancements on account of the willful nature of Brew4You's acts as provided in 15 U.S.C. § 1117;
- I. An order awarding to Naked Winery punitive damages on account of Brew4You's willful violations of law;
- J. An order awarding to Naked Winery prejudgment and post judgment interest;
- K. An award of Naked Winery's costs and expenses, including, without limitation, reasonable attorney's fees;
- L. An order for corrective advertising in a form, manner and frequency that is acceptable to Naked Winery and the Court; and
- M. Such other and further relief as this Court deems just and proper.

JURY DEMAND

Pursuant to Federal Rules of Civil Procedure 38(b), Plaintiff demands a trial by jury as to all issues so triable in this action.

Dated Nov. 2, 2015



Diane Siegel Danoff, PSB No. 50644

Derek J. Brader, PSB No. 312513

DECHERT LLP

Cira Centre

2929 Arch St.

Philadelphia, PA 19104-2857

(215) 994-4000

diane.danoff@dechert.com

derek.brader@dechert.com

Attorneys for Plaintiff

NAKED WINES LLC

Of Counsel:

Hillary A. Brooks, OSB No. 012138

Delfina S. Homen, OSB No. 104088

MARGER JOHNSON & McCOLLOM, P.C.

888 SW Fifth Avenue, Suite 1050

Portland, OR 97204

(503) 222-3613

hillary.brooks@techlaw.com

delfina.homen@techlaw.com

Attorneys for Plaintiff

NAKED WINES LLC